Supreme Court Refuses to Make Ruling on Wiretaps Retroactive

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The Supreme Court went out of its way yesterday to announce that one of its recent controversial rulings would not be used to reverse convictions in past criminal cases.

By a 7 to 2 vote the Court said its June 17 decision throwing out wiretap evidence illegally obtained by state policemen will not affect use of such evidence in trials before that date.

Before June 17, the Court said, state police and prosecutors were justified in relying on a 1952 Supreme Court ruling that wiretap evidence was admissible in state criminal trials even though police broke the Federal law to get it.

It was the fifth time since 1965 that the Court, in response to the pleasof prosecutors that retroactive rulings would hinder law enforcement, gave what it calls "prospective aplication" only. Three other precedent-breaking decisions, including the 1963 ruling that impoverished defendants were entitled to free trial counsel, have been applied retroactively, giving many prisoners automatic new trials.

Yesterday's action came in a case the Court could have avoided becausethe petition for review was filed too late under the Court's own rules. But the Court granted review and, without calling for oral argument, upheld the petitioner's conviction and 10-year prison sentence.

The petitioner was Harold C. Fuller, a construction engineer in Fairbanks, Alaska, who was found guilty of hiring a gunman to shoot a man who had become friendly with his estranged wife.

A key item of evidence was a telegram to the gunman from Fuller, apparently intercepted by Alaska police in violation of the Federal Communications Act, the same law that prohibited wiretapping until modified last summer by the new national Crime Control Act.

The high court held, over the dissents of Justices Hugo L. Black and William O. Douglas, that even if the telegram was illegally intercepted and its contents illegally divulged in court, Fuller was out of luck.

The ruling may have significance for the Federal Government, which is asking the Court to limit the impact of its decision last December that agents must obtain warrants before they electronically "bug" premises without trespassing.

In other action:

Selective Service

The Court agreed to consider whether the Selective Service System can draft a man who held an exemption as the sole surviving son of a soldier killed in World War II after the draftee's mother dies and he has no sisters.

Jack F. McKart, 25, of Chicago, is challenging his conviction and three-year jail sentence for failing to report for induction in 1966. The case is another test of the rights of draftees to attack their 1-A classifications in court.

Solicitor General Erwin N. Griswold, who has been at odds with Selective Service Director Lewis B. Hershey, conceded that McKart had been exempt but said he failed to claim the exemption through draft board channels and was barred from using the exemption as a defense in his criminal trial.